

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1052 of 2015

1. Sevati Patel W/o Late Kondu @ Bharat Patel Aged About 25 Years,
2. Koman Patel S/o Late Kondu @ Bharat Patel Aged About 7 Years,
3. Falitlal Patel S/o Late Kondu @ Bharat Patel Aged About 2 Years & 8 months,

Appellant No. 2 & 3 are Minors Through Natural Guardian Mother Appellant No. 1, Sevati Patel W/o Late Kondu @ Bharat Patel,

All are R/o Lalkhadan, Bilaspur, P. S. Torwa, Tahsil and Civil & Revenue District- Bilaspur, Chhattisgarh.

4. Punu Patel S/o Rai Singh Patel Aged About 52 Years,
5. Bitan Bai Patel W/o Punu Patel Aged About 51 Years,

Appellant No. 4 & 5 are R/o Village Janjera, P. S. Jonk, District- Nuapaada (Odisha).

---- Appellants/Claimants

Versus

1. Satan Kumar Sahu S/o Jethu Sahu R/o Arya Samaj Baijnath Para, P. S. Kotwali Chowk, Raipur, District- Raipur, Chhattisgarh.
2. Nanakram Sahu S/o Pilkun Sahu R/o Aamsena, Khariyaar Road, District : Nuapaada (Odisha).
3. Bajaj Allianz General Insurance Co. Ltd. Through Competent Authority, Shiv Mohan Bhawan, Vidhan Sabha Marg, Pandri Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Sunil Pillai, Advocate.
For Respondent No. 3	:	Shri Rohitashva Singh, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

08/04/2019

- 1) This appeal is by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the award dated 13/03/2015 passed by the VII Additional Motor Accident Claims Tribunal, Raipur in Claim Case No. 186/2013 awarding the total compensation of Rs. 4,25,500/- with interest @ 6% per annum from the date of application till realization, fastening liability on the non applicants jointly and severally.
- 2) As per claim petition, on 02/07/2012 at around 10:30 AM deceased Kondu @ Bharat Patel, 28 years of age earning Rs. 4,000/- per month by doing agriculture work, was riding his bicycle & going towards village Kokdi from village Kasiyani, near Barma STD at Khariyar Road with a moderate speed. However, on the way non-applicant No. 1 Satan Kumar Sahu by driving vehicle Tractor Trolly bearing No. OR26 A 4295 & OR26 A 4296 (offending vehicle) in a rash and negligent manner dashed the bicycle of the deceased. As a result of this accident Kondu @ Bharat Patel died on the spot. At the time of accident the offending vehicle was owned by non-applicant No. 2 and insured with non-applicant No. 3.
- 3) On the claim petition being filed by the claimants wife, children & parents under section 166 of Motor Vehicles Act, 1988, the Tribunal considering the evidence led by the parties passed an award as mentioned above.
- 4) Learned counsel for the appellants/claimants submits as under:-
 - i) that the income of the deceased has wrongly being considered by the Tribunal as Rs. 3,000/- per month; whereas he was earning Rs. 4,500/- per month as agriculturist.
 - ii) that 1/3 deduction towards personal and living is also

against the law and it should have been 1/4th, looking to the five person dependent upon deceased.

iii) that no future prospect has been granted to the claimants.

iv) that the amount awarded towards other heads also being on the lower side deserves to be enhanced suitably.

In support of above contentions, reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Smt. Sarla Verma and Others V/s Delhi Transport Corporation and another, (2009) 6 SCC 121** and **National Insurance Co. Ltd. V/s. Pranay Sethi, (2017) 16 SCC 680**.

- 5) On the other hand, learned counsel for the respondent/ Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation which needs no interference by this Court.
- 6) No counter appeal has been filed by the respondent as submitted by counsel for the parties.
- 7) Heard, learned counsel for the parties and perused the material available on record.
- 8) As regards income of the deceased, though no documentary evidence to substantiate the particular income of the deceased has been adduced by the claimants, however, considering the minimum wages at the relevant time, the income of the deceased and safely be taken as Rs. 4,500/-. Further, considering the age of the deceased i.e. in between 26 to 30 years the dependency, the nature of his job and the decision of the Hon'ble Supreme Court in Sarla Verma and Pranay Sethi (Supra), the claimants are entitled for compensation in the following manner :-

Sl. No.	Heads	Calculation (In rupees)
01.	Income of the deceased @ Rs. 4,500 per month	Rs. 54,000/- (Per annum)
02	40% of (1) above to be added towards future prospect	(Rs. 54000 + Rs. 21600) = Rs. 75,600/-
03.	1/4th deduction towards personal and living expenses of the deceased	(Rs. 75600 – Rs. 18900) = Rs. 56,700/-
04.	Multiplier of 17 to be applied.	Rs. 9,63,900/-
05.	Towards loss of estate, loss of consortium and funeral expenses	Rs. 70,000/-
	Total compensation	10,33,900/-

Since the Tribunal has already awarded Rs. 4,25,500/- after deducting the same from the above amount, the claimants are held entitled for additional compensation of Rs. 6,08,400/- with interest @6% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

- 9) In the result, the appeal is allowed in part with modification in the impugned award to the above extent.

-Sd/-
(Gautam Chourdiya)
Judge